

Cross Walk for 2015 Protective Order Legislation

NOTE #1: Changes to KRS 403 include sections that are repealed and reenacted. This was done to simplify the method of making changes to the law, it does not always represent actual amendments. Descriptions below are limited to substantive amendments to the current law. Small wording amendments and cases where changes are not made may not be noted.

NOTE #2: Sections 1-18 represent amendments to current law related to emergency protective orders and domestic violence orders (KRS 403.715 - 403.785). The changes are modest and intended to simplify language that was duplicative or has been in existence since the bill's enactment in 1984. Also note that if a current section of KRS 403 is not amended, it may not appear in the bill; this does not mean it has been removed. Sections 19 forward includes the new sections of law that create interpersonal protective orders to be used in dating violence, rape, and stalking cases. The latter sections of the bill include conforming statutes and the bill's enactment date.

<i>Section</i>	<i>Description of Section</i>	<i>Comparison of HB 8 to Existing KRS 403</i>
SECTION 1 - 18 Amendments to Existing Domestic Violence & Abuse Act (KRS 403)		
SECTION 1		
Legislative Intent	legislative intent (subsections (1)-(5))	<u>NO CHANGES</u>
SECTION 2		
Definitional Section	definitional section (subsections (1)-(7))	<u>Change:</u> Definition under KRS 403.720 for domestic violence is expanded to add stalking; and grandchildren are added to the definition of family member. Definitions for foreign protective orders (KRS 403.7521(1)) and orders of protection are added but current meaning is not changed; definition for substantial violation added (KRS 403.761(1)) but current meaning not changed; existing definition for GPS (KRS 403.720(3)) is simplified but current meaning not changed.
SECTION 3		
Who May File and Jurisdiction of Orders	who may file for a protective order and jurisdiction of orders (subsections (1) - (8))	<u>Change:</u> There are no changes to who may file for protection (victims of domestic violence (KRS 403.725(1)(2)(3)) and adults on behalf of minor victims KRS 403.725(3)). There is one change to the protective order petition that will add information on secondary and post-secondary institutions if relevant. Jurisdiction for EPOs and DVO's.
SECTION 4		
Ex-Parte Hearings and Service	ex-parte hearing to review petition and issuance of temporary order; hearing set; summons to adverse party (subsection (1)(a)(b))	<u>Change:</u> Process for review and issuance of emergency orders is substantively the same (KRS 403.735, KRS 403.745); this version simply clarifies what steps should be taken upon no finding of abuse; a finding of abuse; and a finding of abuse <u>and</u> immediate and present danger.
	service of the order upon a respondent (subsection (1)(b))	<u>NO CHANGE:</u> same as KRS 403.735(6) and 403.740(5)

SECTION 4, continued		
	prohibition on mediation except in specified circumstances (subsection (2)(a)(3))	NO CHANGE: same as KRS 403.740(2)
	courts shall document reason for not issuing an emergency order (subsection 2(b))	NO CHANGE: same as KRS 403.735(4)).
SECTION 5		
Criminal and Civil Histories and Absence of Respondent at Hearing	the court may access criminal and protective order histories (subsection (1)(a))	NO CHANGE
	minor petitioners and respondents (subsection (1)(b))	Change: adds new language to require the courts, in the case of a minor petitioner or respondent, to inquire about where they attend school and to impose conditions that have the least disruption in the administration of education to the parties.
	absence of respondent at hearing; continuance of EPOs for limited period (subsections (2)(a)(b)(c))	Change: same as KRS 403.740(4)(6) except that courts are provided more flexibility with respect to continuation of hearing when respondents have not been served or do not attend the proceedings. Additionally, the two-year limit on continuances is removed.
SECTION 6		
Hearing and Issuance of Orders	hearing with both parties; issuance and conditions of orders (subsection (1))	Change: Simply lists conditions for emergency (403.740) and permanent (403.750) orders in one section instead of separately. Additionally, clarifies that when directing or prohibiting any other actions that the court believes will be of assistance in eliminating future acts of domestic violence and abuse, a judge shall not order the petitioner to take any affirmative action.
	conditions for restrictions on appearance at specified locations by respondent (subsection (2))	NO CHANGE: Same as KRS 403.747(1)-(4) except that language is simplified.
	when temporary child support is granted, court shall enter order detailing how it is to be paid and collected (subsection (3))	NO CHANGE: Same as KRS 403.750(4)
	length of orders up to three years and allowance for reissuance (subsection (4))	NO CHANGE: same as KRS 403.750(2)

SECTION 7		
Service and Provisions Related to Orders	Orders are effective and binding upon notice or service (subsection (1))	NO CHANGE: same as KRS 403.735(6)
	costs, fees, or bond shall not be assessed against or required of a petitioner (subsection (2))	NO CHANGE: same as KRS 403.730(3), 403.740(3), 403.750(5)
	prohibits mutual orders or mediation except under specific circumstances (subsections (3)(4))	NO CHANGE: same as KRS 403.735(2); 403.725(5)
	either party may amend an order upon proper filing of a motion (subsection (5))	NO CHANGE: same as KRS 403.750(3)
	testimony offered by adverse parties (subsection (6))	Change: Testimony by an adverse party is generally not admissible in criminal proceedings involving the same parties; an exception is made to allow that testimony for purposes of impeachment.
	domestic violence intake centers (subsection (7)(a)).	Change: adds new language to permit Court of Justice, county and Commonwealth's attorneys, law enforcement agencies, and victim services organizations to jointly operate a domestic violence intake center to assist persons who apply for protective orders. Permissive only.
	referral to county attorney (subsection (7)(b))	Change: same as KRS 403.743(1)-(5). New version is simplified and referral to a county attorney by a court is now permissive, not mandatory
	a person's right to file not affected by that person leaving residence to avoid abuse (subsection (8))	NO CHANGE: same as KRS 403.725(1)
	petitioner's and minor's addresses shall be omitted or deleted from records accessible to the public or to the respondent (subsection (9))	NO CHANGE: same as KRS 403.770
	expungement of protective order records	Change: the bill adds new language to allow a court, for good cause shown, to expunge the records in a case that did not result in the issuance of a domestic violence order. Conditions include: 6 months have elapsed since the case was dismissed; and during the 6 months preceding the expungement request, the respondent has not been bound by an order of protection. For the purposes of this subsection, expungement has the same meaning as KRS 431.079.

SECTION 8		
Coordination of Domestic Relations Actions	family members or members of an unmarried couple may file for protection notwithstanding intent to file under KRS 403 (subsection (1))	<u>NO CHANGE:</u> same as KRS 403.725(2)
	parties filing for a protective order shall make known to the court any pending custody or divorce actions involving petitioner and respondent; and those filing pursuant to KRS 403 shall make court aware of existence of any protective order (subsection (2)(b)))	<u>NO CHANGE:</u> same as KRS 403.725(1)(4)
	if family members or members of an unmarried couple are filing an action for dissolution, custody, or visitation, that court shall have jurisdiction to issue a protective order (subsection (3))	<u>NO CHANGE:</u> same as KRS 403.725(7)
SECTION 9		
Use of AOC Forms and LINK Entry	entry into LINK; AOC forms (subsection (1)(2))	<u>NO CHANGE:</u> same as KRS 403.737, 403.770(2) except that this section is moved up several subsections.
	each agency designated for entry of summonses and orders into LINK shall enter the records immediately upon receipt (subsection (3))	<u>NO CHANGE:</u> same as KRS 403.770(3)
	a copy of the petition and order shall be certified and forwarded by the circuit clerk to the clerk in the county of residence (subsection (4))	<u>NO CHANGE:</u> same as KRS 403.770(4)
SECTION 10, 11, 12, 13, 14, 15		
Foreign Orders of Protection	processes for filing, authentication, enforcement, presumption of validity, entry and clearance from LINK, modification, and violation of foreign orders of protection	<u>NO CHANGE:</u> same as KRS 403.751, 403.7521, 403.7524, 403.7529, 403.7531, 403.7535, 403.7539 except that language has been simplified and reordered

SECTION 16		
GPS Devices	conditions for requiring respondent to wear a GPS device (subsection(1)(2)(3)(4)(5))	NO CHANGE: same as KRS 403.761 except that language has been shortened and simplified. Note that a definition of GPS devices has been added to definitional section.
	respondents who fail to wear, remove, tamper with, or destroy a GPS device are guilty of Class D felony (subsection (6))	NO CHANGE: same as KRS 403.761
SECTION 17		
Violation of Protective Orders	violation of the terms or conditions of an order shall constitute contempt of court and a criminal offense. Once a criminal or contempt proceeding has been initiated, the other shall not be undertaken (subsection (1)(2)(3))	NO CHANGE: same as KRS 403.760(1)(2)(3)(4)(5)
	violation of an order of protection is a Class A misdemeanor (subsection (4))	NO CHANGE: same as KRS 403.763(2)
SECTION 18		
Duties of Law Enforcement	court shall direct law enforcement to assist petitioner; law enforcement shall aid victims by remaining at the scene if there is danger or in accessing medical treatment (subsections (1)(2))	NO CHANGE: same as KRS 403.755(1), 403.785(1)
	orders of protection shall be enforced in any county of the Commonwealth (subsection (3))	NO CHANGE: same as KRS 403.785(2)
	officers acting in good faith shall be immune from criminal and civil liability (subsection (4))	NO CHANGE: same as KRS 403.755(2)
	law enforcement agencies shall report to Cabinet within 48 hours (subsection (5))	NO CHANGE: same as KRS 403.785(1)

SECTION 19 - 52: Creation of New Interpersonal Protective Orders (KRS 456)

SECTION 19		
Definitional Section (comparable to Section 2 above as it relates to domestic violence cases)	definitional section for the newly established KRS 456	NEW: the bill creates definitions for dating relationship, dating violence and abuse, foreign protective order, global positioning monitoring system (GPS), order of protection, sexual assault, stalking, and substantial violation.
SECTION 20		
Legislative Intent (see Section 1 above)	legislative intent (subsections (1)(a)-(e) - (2))	NEW: the bill adds language expressing the intent of the General Assembly with respect to civil protection orders for victims of dating violence, sexual assault, and stalking. The language mirrors legislative intent wording pursuant to KRS 403 (domestic violence and abuse) except that it specifies that nothing in the bill triggers the federal gun ban on the basis of a dating relationship.
SECTION 23		
Criminal and Civil Histories and Absence of Respondent at Hearing (see Section 5 above)	the court may access criminal and protective order histories (subsection (1)(a))	NEW: Allows courts, prior to or at a hearing for an IPO, to access criminal and protective orders histories related to respondents.
	minor petitioners and respondents (subsection (1)(b))	NEW: Requires courts, in the case of a minor petitioner or respondent, to inquire about where they attend school and to impose conditions that have least disruption in the administration of education to the parties.
	absence of respondent at hearing; continuance of EPOs for limited period (subsections (2)(a)(b)(c))	NEW: Same as KRS 403.740(4)(6) except that courts are provided more flexibility with respect to continuation of hearing when respondents have not been served or do not attend the proceedings. Additionally, the two-year limit on continuances is removed.
SECTION 24		
Hearing and Issuance of Orders (see Section 6 above)	hearing with both parties; issuance and conditions of orders (subsection (1))	NEW: Lists conditions for emergency and permanent IPOs. Additionally, clarifies that when directing or prohibiting any other actions that the court believes will be of assistance in eliminating future acts of dating violence and abuse, sexual assault, or stalking, a judge shall not order the petitioner to take any affirmative action. Differs from domestic violence cases in that provisions related to vacating a shared residence, custody, or child support are not included.
	conditions for restrictions on appearance at specified locations by respondent (subsection (2))	NEW: Affords petitioner and respondent, if present, an opportunity to testify on the issue of locations from which the respondent should be excluded.
	length of orders up to three years and allowance for reissuance (subsection (3))	NEW: Provides that IPOs shall be effective for up to three years as determined by the court and may be reissued. The fact that an order has not been violated since its issuance may be considered by a court in hearing a request for reissuance.

SECTION 25		
Service and Provisions Related to Orders; Expungement of Orders (see Section 7 above)	Orders are effective and binding upon notice or service (subsection (1))	NEW: Orders are effective and binding upon notice or service by a peace officer or the court or upon personal service, whichever is earlier.
	costs, fees, or bond shall not be required of a petitioner (subsection (2))	NEW: Costs, fees, or bond shall not be assessed against or required of a petitioner in order to receive an IPO.
	mediation or mutual protective orders (subsections (3)(4))	NEW: Courts shall not require mediation, conciliation, or counseling as a condition of issuing an IPO. Allows issuance of mutual orders only if separate petitions have been filed by both parties; and the orders are written with sufficient specificity to allow peace officers to identify which party has violated the order.
	amendments to IPOs (subsection (5))	NEW: Upon proper filing, either party may seek to amend an IPO.
	testimony offered by adverse parties (subsection (6))	NEW: Testimony by an adverse party is generally not admissible in criminal proceedings involving the same parties; exception for testimony for purposes of impeachment.
	domestic violence intake centers and referrals to county attorneys (subsection (7)(a)(b)).	NEW: Permits Court of Justice, county and Commonwealth's attorneys, law enforcement agencies, and victim services organizations may jointly operate a domestic violence intake center to assist persons who apply for protective orders. Permissive only. Also provides that a court may suggest that a petitioner contact the county attorney.
	a person's right to file not affected by that person leaving residence to avoid abuse (subsection (8))	NEW: a person's right to file not affected by that person leaving residence to avoid dating violence, sexual assault, or stalking.
	petitioner's and minor's addresses (subsection (9))	NEW: petitioner's and minor's addresses shall be omitted or deleted from any orders or documents that will be made available to the public or to any respondent.
	expungement of protective order records	NEW: the bill allows a court, for good cause shown, to expunge the records in a case that did not result in the issuance of a non-temporary IPO. Conditions include: 6 months have elapsed since the case was dismissed; and during the 6 months preceding the expungement request, the respondent has not been bound by an order of protection. For the purposes of this subsection, expungement has the same meaning as KRS 431.079 as it relates to accessing criminal histories.
SECTION 26		
Coordination of Domestic Relations Actions		NEW: If the petitioner or respondent to an IPO initiates an action under KRS Chapter 403, the party initiating the action shall make known to the court the existence and status of any IPOs.

SECTION 27		
Duties of Law Enforcement (see Section 18)	court shall direct law enforcement to assist petitioner; law enforcement shall aid victims by remaining at the scene if there is danger or in accessing medical treatment (subsections (1)(2))	NEW: Courts shall direct appropriate law enforcement agencies to assist petitioners; law enforcement shall aid victims by remaining at the scene if there is danger or in accessing medical treatment, and advising the victim of the rights available to them.
	enforcement of orders (subsection (3))	NEW: Orders of protection shall be enforced in any county of the Commonwealth
	officer immunity (subsection (4))	NEW: Officers acting in good faith shall be immune from criminal and civil liability
SECTION 28		
GPS Devices (see Section 16)	conditions for requiring respondent to wear a GPS device (subsection(1)(2)(3)(4)(5))	NEW: A court may amend an IPO to require a respondent to participate in a GPS monitoring system under specific circumstances. The subsections specify role of AOC. Note that a definition of GPS devices has been added to definitional section.
	penalty for failure to follow court's order with respect to GPS devices (subsection (6))	NEW: Respondents who fail to wear, remove, tamper with, or destroy a GPS device are guilty of Class D felony.
SECTION 29		
Use of AOC Forms and LINK Entry (see Section 9)	entry of orders into LINK; use of AOC forms (subsection (1)(2))	NEW: All forms, affidavits, and IPOs which require entry into LINK shall be entered on a form prescribed by the AOC.
	certification and forwarding of IPO by the circuit clerk (subsection (3))	NEW: A copy of the petition and IPO or foreign IPO shall be certified and forwarded by the circuit clerk to the clerk in the county of residence of the petitioner.
	each agency designated for entry of summonses and orders into LINK shall enter the records immediately upon receipt (subsection (4))	NEW: Each agency designated for entry of summonses and orders into LINK shall enter the records immediately upon receipt
SECTION 30, 31, 32, 33, 34, 35		
Foreign Orders of Protection	provisions related to foreign orders of protection.	NEW: Provisions related to foreign IPOs, including processes for filing, authentication, enforcement, presumption of validity, entry and clearance from LINK, modification, and violation of foreign orders of protection

SECTION 36		
Violation of Protective Orders	violation as contempt of court and a criminal offense (subsection (1)(2)(3))	NEW: Provides that violation of the terms or conditions of an order shall constitute contempt of court and a criminal offense. Once a criminal or contempt proceeding has been initiated, the other shall not be undertaken.
	violation of an order of protection as a criminal offense (subsection (4))	NEW: Violation of an order of protection is a Class A misdemeanor.
SECTION 37		
Conforming Amendment	crime victim address protection program	Amends KRS 14.304 to add IPOs pursuant to KRS 456 to existing reference to DVOs pursuant to KRS 403.
SECTION 38		
Conforming Amendment	jurisdiction of family court division of Circuit Court	Amends reference to KRS 403.735 to update to KRS 403.735.
SECTION 39, 40		
Conforming Amendment	operation of global positioning monitoring system by a county or combination of counties	Amends KRS 67.372 and 67.374 to add reference to IPOs pursuant to new section of KRS 456.
SECTION 41		
Conforming Amendment	notification of attempt to purchase a firearm	Amends KRS 237.100 to update reference to KRS 403 to replace 403.750 with new reference to 403.740.
SECTION 42		
Warrantless Arrest	warrantless arrest powers upon probable cause that a person has caused physical injury	Change: Amends KRS 431.005 by adding physical injury to a person in a dating relationship to those cases in which a peace officer may arrest a person without a warrant.
SECTION 43		
Conforming Amendment	mandatory arrest for violation of order of protection	Amends KRS 431.015 to add IPOs pursuant to KRS 456 to cases requiring mandatory arrest for violation of orders.
SECTION 44		
Conforming Amendment	consideration of violation of IPO as court determines issuance of pre-trial release conditions	Amends KRS 431.064 to add KRS 456 to the current reference to KRS 403.

SECTION 45, 46		
Conforming Amendment	addition of IPOs to definition of protective order pursuant to stalking statute.	Amends KRS 508.130 to add orders issued pursuant to KRS 456 (foreign and Kentucky IPOs) to the definition of protective order
	transition from stalking restraining orders to stalking IPOs	Amends KRS 508.155 to make verdict or plea of guilty for stalking an application for IPO issued pursuant to KRS 456. Duration of IPO stalking order remains 10 years.
SECTION 47		
Order of Protection Upon Conviction of Sex Offense	creation of criminal sexual assault protective orders	NEW: the bill allows sexual assault victims, upon a conviction of rape, sodomy, or sexual abuse to file for an IPO; mirroring current process for stalking restraining order pursuant to KRS 508.155
SECTION 48		
Conforming Amendment	definitional section pursuant to the offense of domestic violence shelter trespass	Amends KRS 511.085 to add IPOs issued pursuant to KRS 456 to orders issued pursuant to KRS 403
SECTION 49		
Conforming Amendments	use of GPS with a pretrial diversion program	Amends KRS 533.250 to add reference to IPOs issued pursuant to KRS 456 to current reference to orders issued pursuant to KRS 403
SECTION 50		
Conforming Amendments	disposition of cases brought on behalf of dependent, neglected, or abused children	Amends KRS 620.140 to add reference to KRS 456 to current reference to KRS 403
SECTION 51		
Repealed Sections		Lists sections of KRS 403 repealed in the course of amending the Domestic Violence an Abuse Act
SECTION 52		
Effective Date of the Act		This Act takes effect January 1, 2016